

**Submission to the Human Rights Council Universal Periodic Review
Jamaica Country Report**

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Youth Coalition for Sexual Reproductive Rights

Introduction

A. International human rights instruments

Jamaica is party to the following major regional and international human rights instruments: The American Convention on Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of all Forms of Racial Discrimination; International Convention on the Suppression and Punishment of the Crime of Apartheid; Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Jamaica is also a signatory to the United Nations Convention on the Rights of Persons with Disabilities and the Belem Do Para Convention which commits to the elimination of all forms of Violence against Women.

Like most Commonwealth countries, Jamaica has a dualist legal system. International human rights instruments cannot generally therefore be invoked directly before municipal courts; instead domestic legislation must first be

enacted by the Parliament of Jamaica in order to incorporate international conventions and instruments into the national legal system.

B. Human Rights of LGBT Persons

The human right situation of the LGBT people in Jamaica has drastically diminished over the last twenty –five years. While same-sex practices between has always been decriminalized, retention based on the inherited legal system as British colonization, LGBT population is doubly affected by widespread targeted violence directed towards them. Same sex relations are criminalized through the Offences against the Person Act which prohibits "acts of gross indecency" between men, in public or in private. (This is a very general term which can be interpreted to mean any kind of physical intimacy). Further Article 76 (Unnatural Crime) "Whosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years" as well Article 78 (Proof of Carnal Knowledge) "Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only." Against the background the political situation on

LGBT persons have further worsened since the majority government was formed in September 2007, shortly after becoming Prime Minister, Bruce Golding announced that gays and lesbians would not be apart of his government. This pronouncement was followed by several negative statements by members of his government which contributed to a heightening of violence and hostility towards the LGBT populations. Additionally during the on-going review of the Bill of Rights, the government has indicated its support to enact changes which seeks to ban same sex marriages, as well as prohibiting any legal recognition of post-op transgender persons. While these proposed changes have yet been passed, these actions are reflective of further erosion of the human rights of LGBT Jamaicans which further question Jamaica's commitment to international human rights law. Notably since that time there have been several mob related killings of LGBT persons, sadly for these crimes there no one has been charged.

C. Right to Equality and Non-discrimination

The Right to Security of the Person , it is widely reported that the human rights protections for lesbian, gay and bisexual people in Jamaica are constantly under threat. Collectively the lesbian, gay, bisexual and intersex persons have no legal protections against violations of their basic human rights which directly contravenes Article 26 of the ICCPR^a which recognizes that "All persons are equal before the law and are entitled without discrimination to the equal protection of the law, as well Article 2(2) of the ICESCR^b stipulates that "the rights enunciated in the present Covenant will be exercised

^a *International Covenant on Civil and Political Rights*

^b *International Covenant on Economic, Social and Political Rights*

without discrimination of any kind [...].” The current legislation in Jamaica does not guarantee all persons have equal and effective protection against discrimination, in particular in the enjoyment of economic and social rights. The lack of protection against discrimination based on gender identity and gender expression constitutes a failure of the State to take all necessary legislative measures to guarantee equality before the law for everyone.^c We recommend that the State consider enact legislation to protect all persons regardless of the sexual orientation and gender identity, enacting legislation which recognizes sexual orientation and gender identity as criteria of non-discrimination and protection.

D. The Right to Education

Jamaica's international and domestic legal obligations ensure that everyone has a right to education without discrimination on the basis of, and taking into account, their sexual orientation and gender identity. Currently, sexuality education is very limited, reflecting a systematic exclusion of education services for lesbian, gay, bisexual, transgender and intersex young persons. Additionally lack of support by the government seriously impedes equal access to education and equal treatment of LGBTI students, students of same-sex partners, staff and teachers within the school system, who face daily instances of discrimination on the grounds of sexual orientation, gender identity and gender expression.

It is our recommendation that the Government of Jamaica needs to “take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of LGBTQ students, students of same-sex partners, staff and teachers within the education system”. The Government shall also “ensure that education is

^c *Yogyakarta Principles (Principle 20)*, <http://www.yogyakartaprinciples.org>

directed to the development of each student and responds to the needs of students of all sexual orientations and gender identities".^d

These would include the Government conducting its own survey and research about the instances of homophobia and transphobia in the Jamaican school system as well providing comprehensive sexuality approach to all educational services.

Other recommendations and concerns

- Implementation of a uniform national process to change one's sex on a birth certificate and other government issued forms of identification.
- Training for the police and other state security forces on responding to violence against LGBTI persons.
- Supporting the implementation of the Yogyakarta Principles, a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The Principles affirm binding international legal standards with which all States must comply. The State should also develop and implement a foreign policy to promote and protect the human rights of LGBTI people overseas. This will allow Canada to reflect progressive national laws into human rights foreign policy and development aid.

^d *Yogyakarta Principles (Principle 20)*, <http://www.yogyakartaprinciples.org>